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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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WASHINGTON, DC 20515-6216

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<http://www.house.gov/judiciary>

July 17, 2007

### BY FAX AND U.S. MAIL

Mr. Robert Kelner  
Covington & Burling LLP  
1201 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Mr. Kelner:

I am writing in response to your letter today concerning the subpoena for documents served on Mr. Duncan last Friday, July 13. Of course the White House does not have possession, custody or control of RNC documents, and accordingly we do not believe that the White House has any legal right to object to the production of documents from the RNC at this point. In any event, there has already been ample time for both you and the White House to prepare for the production of the documents requested. You will recall that we initially requested these documents on April 12, agreed to give the RNC until July 2 in part to provide additional time for consultation with the White House, and did not object to your request for another extension, until July 11, for purposes of such consultation. Nevertheless, our interest is in receiving the documents we have subpoenaed in order to proceed with our investigation and, as a further accommodation, I am willing to forbear efforts to enforce the Committee's subpoena until no later than 5 p.m. on July 31.

Your letter asks for additional time so that "specific determinations" can be made with respect to executive privilege. Accordingly, it is my expectation that by the time specified above, the Committee will receive the documents requested or, with respect to any withheld, will receive a document-by-document privilege log reflecting such "specific determinations." Your letter does not differentiate between the two categories of documents that you have previously refused to produce pursuant to White House objections, so we would expect to receive the documents or a privilege log with respect to documents in both categories.

I should also make clear that I believe it would be improper for the RNC to refuse to produce subpoenaed documents in its possession based on an assertion of privilege by a third

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party – in this case, the White House. Such a step would be precisely the type of “unilateral action” that your letter decries. I would note that in 1976, when AT&T received a House Subcommittee subpoena for documents to which the White House objected, the White House instructed AT&T to refuse to comply with the subpoena.<sup>1</sup> However, AT&T “felt obligated to disregard those instructions and to comply with the subpoena,” resulting in a lawsuit by the Administration to seek to enjoin such compliance.<sup>2</sup>

To the extent that the White House wishes to object to our subpoena to the RNC as a private party, it therefore has ample opportunity to enforce its own asserted rights in court. If the RNC rejects the course followed by AT&T, and instead engages in “unilateral action” by simply refusing to comply with a House subpoena absent a court order, the refusal to produce the documents called for could subject Mr. Duncan to contempt proceedings, including but not limited to proceedings under 2 U.S.C. § 194 and under the inherent contempt authority of the House of Representatives. I, of course, very much hope this will not occur and that your client will comply with the subpoena by the close of business on July 31.

Sincerely,

  
John Conyers, Jr.  
Chairman

cc: The Honorable Linda Sanchez  
The Honorable Lamar S. Smith  
The Honorable Chris Cannon

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<sup>1</sup>U.S. v. AT&T, 551 F.2d 384 (D.C. Cir. 1976).

<sup>2</sup>Id. at 387.